although, of course, that would be a satisfactory test in many cases — but whether the act displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration."

In *Austin & Whiteley v. S. Bowley & Sons,*[5] Ridley, J. stated: "In my opinion what is intended by a step in the proceedings is some step which indicates an intention on the part of a party to the proceedings that he desires that the action should proceed and has no desire that the matter should be referred to arbitration. I cannot see how in common sense the words of section 4 can apply to something which a defendant has to do in order to save himself from having execution levied upon his goods. That is what defendants desired to do here when they gave notice to defend."

According to the learned counsel for the defendant the entry of appearance was merely to prevent judgment being obtained by default. I agree with this submission. In my opinion that is all that the defendant desired to do when he entered an unconditional appearance. I am, therefore, of the opinion that this is a proper case for granting stay of further proceedings, and I accordingly make an order in terms of the application with costs.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Das & Co.*

Re NOORMOHAMED VIRJIBAH VELMOHAMED, DECD.; SAKKER KHANU NOORMOHAMED MERCHANT & ANOR. v. MALEK SULTAN CALCUTTAWALA & ANOR.

[O. C. J. (Whyatt C.J.) July 23, 1958]

[Singapore — Originating Summons No. 62 of 1958]

Will — Vesting — Pecuniary legatees — Gift of entirety to beneficiary on attaining age of 45 years — Whether legatees entitled to receive their legacies forthwith.

By his will dated July 30, 1956, the testator who died on October 14, 1956, bequeathed a pecuniary legacy to his daughter in the following terms: "To my daughter Sakkarkhnu N. Merchant, the wife of Noormohamed Goolamusion now residing in Bombay, India, the sum of dollars thirty three thousand five hundred upon her attaining the age of forty-five years provided always that my said daughter shall receive the income arising therefrom from the date of my death until she shall attain the age of forty-five". A similar legacy of $20,000 was bequeathed to another daughter and the residue was left to a third daughter in almost identical terms. The two pecuniary legatees have attained the age of 21 years.

The question for the decision of the Court was whether the legatees are entitled to receive their legacies forthwith or whether they must first attain the age of 45 years.

Held: both the pecuniary and residuary legacies bequeathed to the testator's daughter became vested on the death of the testator since the whole of the income from the legacies was payable to the legatees from the date of the testator's death. That being so, the legatees were the absolute owners of those gifts and as such, they were entitled to all the rights of enjoyment which follow from ownership.

Cases referred to:—

(1) *Hanson v. Graham,* 6 Ves. 239.

(2) *In Re Parker,* 16 Ch.D. 44.

(3) *In Re Ussher,* (1922) 2 Ch. 321.

(4) *Gosling v. Gosling,* 70 E.R. 423; (1859) Johns. 265.

ORIGINATING SUMMONS.

Y. R. Jumabhoy for the plaintiffs.

M. A. Lewi for the defendants.

Cur. Adv. Vult.

Whyatt C.J.: — By his will dated the 30th July 1956, the Testator who died on the 14th October 1956, bequeathed a pecuniary legacy to his daughter in the following terms:

"To my daughter SAKKARKHNU N. MERCHANT, the wife of Noormohamed Goolamusion now residing in Bombay, India, the sum of dollars thirty three thousand five hundred upon her attaining the age of forty-five years provided always that my said daughter shall receive the income arising therefrom from the date of my death until she shall attain the age of forty-five."

A similar legacy of twenty thousand dollars was bequeathed to another daughter and the residue was left to a third daughter in almost identical terms. The two pecuniary legatees have attained the age of twenty-one years and although it does not appear from the affidavits filed in these proceedings that the residuary legatee has also attained that age, I assume counsel would have brought the fact to my notice if it were not so, and accordingly I proceed upon the assumption that she likewise has attained her majority. The short point for my decision on these facts is whether the legatees are entitled to receive their legacies forthwith or whether they must first attain the age of forty-five years.

There is no doubt that the legacies are in terms contingent since they are bequeathed upon

the daughters attaining the age of forty-five years, and if the terms of the bequests had stopped at that point, it would be impossible to argue that the legacies were payable forthwith. The bequests, however, continue with words which direct that the legatees shall receive the income arising from the legacies until they attain the age of forty-five and there is a long line of authority, commencing in 1801 with *Hanson v. Graham,*[1] and continuing up to the present day, which establishes that words of contingency are disregarded when the whole of the income from a legacy is given to the legatee meanwhile. The principle is stated by Sir George Jessel with his usual clarity in *In re Parker*[2] in the following words: "In my opinion, when a legacy is payable at a certain age, but is in terms contingent, the legacy becomes vested when there is a direction to pay the interest in the meantime to the person to whom the legacy is given.....". This view was referred to by Astbury J. in *In re Ussher*[3] in these terms: "The rule now is beyond question that a gift that would otherwise be contingent, followed by a gift of the 'whole income' to or for the benefit of the person in question, will vest what would otherwise have been only a contingent gift. That is so in regard to ordinary legacies, and of course it is so *a fortiori* in the case of a gift of residue."

Applying this principle to the present case, it is clear that both the pecuniary and the residuary legacies bequeathed to the testator's daughters became vested on the death of the testator since the whole of the income from the legacies was payable to the legatees from the date of the testator's death. That being so, the legatees are the absolute owners of these gifts and as such, they are entitled to all the rights of enjoyment which follow from ownership. As Vice-Chancellor Page Wood expressed it in *Gosling v. Gosling*[4]: "The principle of this Court has always been to recognise the right of all persons who attain the age of twenty-one to enter upon the absolute use and enjoyment of the property given to them by will, notwithstanding any directions by the testator to the effect that they are not to enjoy it until a later age.....". Thus in *In re Ussher, supra,* the Court held that, as the gift had vested from the date of the testator's death, the legatee was entitled to an immediate conveyance and transfer of the estate on attaining his majority, notwithstanding the provision in the will "to convey..... (the estate).....to the use of (the legatee) when and so soon as he shall attain the age of twenty-five years". By parity of reasoning, it follows in the present case that the legatees being absolute owners of the legacies and having attained their majority are entitled to be paid their legacies forthwith.

Costs to be paid out of residue of the estate.

Order accordingly.

Solicitors: *Mallal & Namazie; Drew & Napier.*